

April 11, 2003

Livestock and Seed Programs
Agricultural Marketing Service
U.S. Department of Agriculture Stop 0249, Room 2092-S
Washington, D.C. 20250-0249

Re: Public Comment on 2002 Farm Bill Food Safety Technologies Provision

The Center for Science in the Public Interest (CSPI) appreciates this opportunity to provide comments to the U.S. Department of Agriculture (USDA) on a requirement in the 2002 Farm Bill pertaining to the use of approved food safety technologies for commodity purchase programs. CSPI is a non-profit organization based in Washington, D.C. Since 1971, CSPI has been working to improve the public's health, largely through its work on nutrition, food-safety and alcohol issues. CSPI is supported primarily by 800,000 subscribers to its *Nutrition Action Healthletter*, the largest circulation health newsletter in North America.

Introduction

Section 4201 of the 2002 Farm Bill states that in acquiring commodities for distribution through programs including the National School Lunch program, "the Secretary shall not prohibit the use of any technology to improve food safety that-- (A) has been approved by the Secretary; or (B) has been approved or is otherwise allowed by the Secretary of Health and Human



Services.”¹ Irradiation is a technology that has been approved by the Food and Drug Administration (FDA) for use on certain foods. However, FDA regulations require that irradiated foods be clearly labeled as irradiated.²

Thus, while the Farm Bill may be interpreted as allowing irradiated foods to be used in the National School Lunch program, it does not give USDA the authority to circumvent the requirement that irradiated foods be clearly labeled. If irradiated foods are to be distributed through the National School Lunch Program, then USDA should ensure that the foods are properly identified as irradiated to the schools that receive them. Furthermore, as a condition of receiving irradiated commodities through the National School Lunch Program, USDA should require that schools allow parents to make an informed decision as to whether or not their children can be served irradiated foods. Specifically, USDA should require participating schools to 1) obtain signed permission slips from parents before children can be served irradiated foods, 2) provide notice, on menus sent to parents and students, regarding which foods are irradiated, and 3) assure that irradiated foods are segregated from non-irradiated foods.

¹2002 Farm Bill Sec. 4201.

²21 CFR § 179.26 (c).

I. Parental Notification and Clear Labeling are Essential to Ensuring Consumer Choice

A. Schools Should Provide Notice to Parents of Their Intent to Serve Irradiated Food and Obtain Signed Permission Slips From Parents

As a provider of free commodities to schools through the National School Lunch Program, the USDA can set conditions that school food authorities must meet in order to be eligible to receive commodities through the program. For example, USDA regulations require that as a condition of participating in the National School Lunch Program, each school authority, with respect to participating schools under its jurisdiction, agree to maintain “proper sanitation and health standards,” “maintain necessary facilities for storing, preparing, and serving food,” make records available upon request, and several other conditions.³

Under the 2002 Farm Bill, USDA may now decide to supply irradiated foods through the National School Lunch Program. If so, USDA should require that schools that receive such commodities allow parents to make an informed choice about whether their children should eat irradiated foods. To that end, USDA should ensure that participating schools provide notice to parents that irradiated foods may be served through the National School Lunch Program and obtain written parental permission for their children to eat irradiated foods. If there are schools in which a majority of parents choose not to have their children eat irradiated foods, then irradiated food should not be distributed to those schools.

³7 CFR § 210.9 (b).

B. Schools Should Be Required to Clearly Label Irradiated Foods on Menus That Are Distributed to Parents and Students

Specific food items that are irradiated should be clearly labeled on menus that are distributed to students, sent home to parents, and available in the school lunch room. The radura symbol as well as the statement “Treated with radiation” or “Treated by irradiation” should appear in conjunction with the food item on the menu and should also be displayed in the lunch room. This would give parents an easy tool to help guide their children in identifying irradiated foods in any given meal.

C. Schools Receiving Irradiated Foods Should Have a Mechanism in Place for Separating and Clearly Identifying Irradiated Foods from Non-Irradiated Foods

As another condition for receiving donated irradiated foods through the National School Lunch Program, schools should be required to have a system in place to separate irradiated foods from non-irradiated foods in school kitchens and cafeterias. Segregation of irradiated foods is critical both for consumer choice and food safety.

Irradiation can destroy bacteria and parasites that are present in food. If a food becomes contaminated with pathogenic bacteria after it has been irradiated, then these bacteria will be able to multiply without competing with many other species of bacteria. Thus, the cross contamination of irradiated foods from non-irradiated foods could lead to dangerously high levels of pathogenic bacteria in irradiated foods. Therefore, irradiated foods should be stored separately from non-irradiated foods.

Irradiated foods should be segregated from non-irradiated foods throughout the chain from production to consumption. Separation of irradiated foods from non-irradiated foods at the point of service in the cafeteria is the only way to assure that children whose parents do not want

them to consume irradiated foods are not eating these foods. Therefore, schools that receive irradiated commodities should be required to have a method for identifying and separating irradiated foods from non-irradiated foods.

II. Requiring Informed Parental Choice is Consistent With FDA's Requirements on the Labeling of Irradiated Foods and With the Consumer's Right to Know

A. Requiring Parental Notification and Choice is Consistent with FDA's Requirements on the Labeling of Irradiated Foods

The labeling of irradiated foods is required by FDA regulation. The regulation for the labeling of irradiated foods indicates that retail packages of irradiated food must have the radura logo as well as the statement "Treated with radiation" or "Treated by irradiation" on the label.⁴ The regulation further states that for irradiated foods not in package form, the information that the food has been irradiated "must be prominently and conspicuously displayed to purchasers."⁵ In the case of a dependent child using his or her parent's money to buy lunch, both the child and the parent are purchasers who should receive information indicating that the product that they are purchasing has been irradiated.

Parental notification is essential since in several circumstances, children have been deemed incapable of making an informed decision without parental involvement. For example, in order for children who have not attained the legal age of consent to participate in a research study, permission from at least one of the child's parents is generally required as well as adequate

⁴21 CFR § 179.26 (c)(1).

⁵21 CFR § 179.26 (c)(2).

provisions for soliciting assent of the child.⁶ Notification thus provides parents with the opportunity to make informed choices about which foods their children may eat through the school lunch program.

B. Parental Notification and Choice is Consistent With the Consumer's Right to Know

Disclosing to parents that school lunch foods have been irradiated satisfies a generally accepted principle, termed the consumer's "right to know." That right is recognized by the General Assembly of the United Nations in its Guidelines for Consumer Protection, which are intended in part to provide "[a]ccess of consumers to adequate information to enable them to make informed choices according to individual wishes and needs."⁷ The U.N. guidelines were inspired by President John F. Kennedy's pronouncement, in his landmark message to Congress in March 1962, that consumers have a right "to be given the facts [they] need to make an informed choice," as well as a right "to be protected against fraudulent, deceitful, or grossly misleading information, advertising, labeling, and other practices."⁸

When irradiation is used, consumers want irradiated foods to be clearly and conspicuously labeled. That strong preference, as well as other consumer preferences about how

⁶45 CFR § 46.408.

⁷ United Nations Guidelines for Consumer Protection, expanded in 1999, <<http://www.unep.org/pc/sustain/guidelines/un-guidelines.htm>>.

⁸ President John F. Kennedy, Message Relating to Consumers' Protection and Interest Program (March 15, 1962), p. 2.

irradiated products should be labeled, is reflected in a nationally representative poll of over 1,000 adults commissioned by CSPI and AARP.⁹ The 1999 poll found:

- Overwhelming support for labeling of irradiated foods to indicate that they have been irradiated (88.6 percent in favor);¹⁰
- Strong support for placement of the irradiation label on the front of the food package (59.1 percent in favor), as opposed to the back of the package (9.8 percent in favor);¹¹
- Strong support for use of the labeling term “Treated by Irradiation” (57.8 percent in favor) instead of the alternative terms “Electronically Pasteurized” (15.3 percent in favor) or “Cold Pasteurized” (9.2 percent in favor).¹²

Parents, like other consumers, want to know how foods they or their children eat have been treated. Parents and children should be given adequate information to make an informed decision.

⁹ Bruskin/Goldring Research, *Irradiation Telephone Survey for the Center for Science in the Public Interest and AARP*, (April 16-18, 1999) [hereinafter *1999 Irradiation Opinion Poll*].

¹⁰ An additional 4.1 percent of respondents either did not respond or stated that they did not know whether foods should be labeled to indicate whether they have been irradiated. *1999 Irradiation Opinion Poll*, Table 1.

¹¹ An additional 30.3 percent of respondents stated that it does not matter whether the irradiation label is placed on the front or on the back of the food package, and 0.8 percent of respondents did not respond to the question or stated that they did not know. *1999 Irradiation Opinion Poll*, Table 2.

¹² An additional 17.7 percent of respondents either did not respond to the question or stated that they did not know which labeling term should be used. *1999 Irradiation Opinion Poll*, Table 3.

Conclusion

Consumers vary in their susceptibility to foodborne disease, and they have different opinions about irradiated food. Parental notification and permission should be a condition for schools to receive irradiated commodities through the National School Lunch Program. This would not only enable parents wary of irradiated foods to avoid having their children eat these foods, but it also would allow parents who choose irradiated foods for their children to do so.

Parents, in conjunction with their children, should be given a choice about irradiated foods in school lunches. The Farm Bill provisions were not an effort to limit consumer choice or to circumvent the labeling requirements for irradiated food. Therefore, as a condition of receiving irradiated commodities through the National School Lunch Program, USDA should require schools to demonstrate that they have a system for parental notification and consent and for the clear labeling and separation of irradiated foods from non-irradiated foods.

Respectfully submitted,



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